

**Via Fax (505-753-5150) and E-Mail (tedjtrujillo@gmail.com)**

October 3, 2014

Ted J. Trujillo  
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P.O. Box 2185  
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**Re: Jessica Madrid  
Confidential Offer of Settlement in Accord with NMRA Rule 11-408**

Dear Mr. Trujillo:

Thank you for your email acknowledging my calls. The following information is provided to you as a confidential offer of settlement and expands on the information provided to you via email. We request a response by Friday October 10, 2014.

Ms. Madrid has been employed with Rio Arriba County for twenty years, and the last ten years as the Human Resources Director. Her work record was excellent, as was her rapport with County officials during her tenure, including the current County Manager. When Ms. Madrid was involuntarily removed from her position on July 14, 2014, the County Manager admitted that her work performance was unquestioned and not the issue, but the move was being forced over a political dispute. This firm represents Ms. Madrid and we are providing County officials with an opportunity to address this situation prior to bringing litigation under the Whistleblower Protection Act ("WPA") for retaliation after Ms. Madrid engaged in protected activity related to the County's Summer Programs beginning in June 2014.

The WPA provides protection for County employees regardless of whether the employee's status as a probationary, exempt or classified employee. The statutory definition of employee makes no distinction between exempt and classified employees. NMSA 1978, §10-16C-2 B. Ms. Madrid engaged in protected activity within days of her being moved summarily to the Detention Center. The WPA's definition of protected activity was met when Ms. Madrid stated to the County Manager that Summer Programs were not being operated in accord with the standards in place, the Summer Youth program was sufficiently funded and there was no reason for the delay to start the program, and individuals selected by a County Commissioner were not qualified for the positions because the individuals' background information disclosed convictions and individuals did not possess current driver licenses when the position made this a requirement.

In addition, Ms. Madrid informed the County Manager that the County Commissioners did not have the authority to make hiring and firing decisions for employees. It is clear from the documentation and recordings provided to me that Commissioner Barney Trujillo forced the

County Manager's hand here over a political issue with individuals who ran against him for his seat. It is also clear Commissioner Barney Trujillo was motivated by providing another resident with Ms. Madrid's position.

Commissioner Barney Trujillo received a \$50,000.00 no bid contract from the Espanola School Board that has caused considerable comment from the community given the fiscal issues of the school district. The quid pro quo appears to be the selection of Espanola School Board member, Annabelle Ortiz-Almager, as the new HR Director for the County. Ms. Ortiz-Almager was a former employee of Los Alamos National Laboratory and her profile shows no experience in human resources. In addition, Ms. Ortiz-Almager is being paid at the M-17 level, where Ms. Madrid was being paid at the M-12 level. Ms. Madrid had asked several times over the years for an increase. Her last request for an upgrade occurred in April 2014 to begin in the current fiscal year but was denied due to budget constraints. It appears those same constraints have not been an issue for Ms. Ortiz-Almager's hire.

Ms. Madrid was involuntarily transferred on July 7, 2014 because she was following the rules for placing individuals in the Summer Program. Ms. Madrid was involuntarily transferred because County Commissioner Barney Trujillo became livid when he found out another County Commissioner placed two daughters of Barney Trujillo's political rivals in the Summer Youth program.

Two women were placed on the Summer Youth program list of hires who were the teenage daughters of two individuals who ran against Barney Trujillo for the County Commission. Barney Trujillo sought out confirmation of this information during the orientation session for new hires for the Summer Programs on May 28, 2014. Barney Trujillo then called the County Manager. He was so livid during this phone conversation that the County Manager had to hold the phone away from his ear. Ms. Madrid could hear Barney Trujillo referring to the two women as "fucking bitches" and demanding the "fucking bitches are fired immediately". Then, Barney Trujillo referred to Ms. Madrid as a "fucking bitch. I want her [Madrid] fired." Even when the County Manager attempted to explain Ms. Madrid had nothing to do with the selection of these women since Commissioner Montoya placed them on his hire list, Barney Trujillo repeated his demand for Ms. Madrid's termination.

After Barney Trujillo's implosion and demand for Ms. Madrid's employment, the County Manager informed her to apply for an open position with RTD. Support from other administrative offices was withdrawn immediately to punish Ms. Madrid and send the message she was no longer welcome after twenty years. But, the County did not stop there. Ms. Madrid's actions to contest the temporary halt of the Summer Youth program were ignored. Barney Trujillo engineered this temporary halt by stating the funding was not available, which was false. This was done in an attempt to sanitize his actions to remove his political rivals' daughters.

The Summer Food program is funded through a grant, and the grant rules must be followed. The Summer Youth program follows the new hire process in place for Rio Arriba County. These rules include background checks, pre-employment drug tests, possessing a valid license. When Ms. Madrid informed her chain of command about the rules not being followed and individuals failing to qualify for positions, her complaints were ignored and she was directed to hire the

individuals regardless of the information that should have disqualified the individuals from employment.

Moreover, Ms. Madrid's pleas to not hire individuals Commissioner Barney Trujillo listed because of issues in the background checks were ignored and this failure placed the County at great risk. All of the individuals who could not pass background checks were on Commissioner Barney Trujillo's list. For example, Joey Martinez's felony charges were ignored. Commissioner Barney Trujillo intervened personally to make sure this person was hired. Joey Martinez was falling asleep during orientation and yet no one was permitted to do anything about it. Joey Martinez was arrested in Los Alamo in possession of a fuel card from Rio Arriba County's DWI program and drug paraphernalia was discovered in his car. His prior charges from April 5, 2013 and May 28, 2011 were ignored. There are other examples as well that show the complete deference to Commissioner Barney Trujillo's selection for these programs, and this appeasement will be used to prove Ms. Madrid's involuntary transfer was based on a retaliatory motive for Ms. Madrid opposition to his actions.

This is a strong case and places Rio Arriba County at great risk. The WPA provides for double lost wages, special damages, attorney fees and costs of litigation. Given Ms. Madrid's excellent work record, longevity with Rio Arriba County and supporting information provided, her proposal is a modest one.

Ms. Madrid requests she remain in her classified position, her rate of pay remains at the level she had as HR Director and is not reduced when her FML expires, she is afforded all future step and cost of living increases and for her attorney fees. She requests a non-disparagement clause that includes all County Commissioners and County officials. Given the penalties available under the WPA, Ms. Madrid's request should be granted eagerly. We will agree to confidentiality as permitted under state law. Ms. Madrid has not responded to media inquiries about her removal. If the Rio Arriba County does not resolve this matter amicably, all pleadings are public information, and Ms. Madrid's full story will be told.

Thank you for your consideration.

Sincerely,



Diane Garrity

cc. Jessica Madrid

# **LAW OFFICES OF TED J. TRUJILLO**

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October 17, 2014

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Sent via email to: ([dgarrity@sgmnmlaw.com](mailto:dgarrity@sgmnmlaw.com))

Re: *Your Offer of Settlement for Jessica Madrid*

Dear Ms. Garrity:

Thank you for allowing me some additional time to respond to your letter of October 3, 2014. This is Rio Arriba County's official response to your offer of settlement.

While it is true that Ms. Madrid has been employed with Rio Arriba County for twenty (20) years, it is not true that her work record or rapport with County officials was excellent, or that the County Manager has ever admitted that her work performance was unquestioned or that her transfer was the result of politics. In fact, there are numerous examples of Ms. Madrid's poor performance, emotional and erratic personality and failure to correct her behavior that both justified her transfer and demonstrate that she is acting in bad faith in bringing this claim. Should this matter proceed, the County will submit testimonial evidence from a number of present and former County employees, including Ms. Madrid's own former staff, that supports the County's position. If you have evidence to the contrary, other than Ms. Madrid's testimony, the County would be willing to review new evidence.

With regards to her specific job performance, County Manager Tomas Campos had frequent feedback for Ms. Madrid regarding the fact that she did not adequately train or communicate with her staff, which resulted in Ms. Madrid being the only Human Resources staff member who was in the know regarding the functioning of her Department. Ms. Madrid's own staff, Molly Otero and Marie Gutierrez, has indicated that Ms. Madrid was very territorial and deliberately kept them in the dark regarding her Department, and that she was prone to throwing temper tantrums, including throwing things out of anger. Ms. Madrid's inability and unwillingness to properly communicate with or utilize her support staff created a bottleneck effect in the Human Resources Department, and she appears to have deliberately created a situation where she was the only person who could handle a majority of the Human Resources tasks. Ms. Madrid did not keep regular office hours, so this in turn created a situation where the only person who knew about the HR Department was the Director herself who was rarely in the office before 10 am and chose to do most of her important work late at night.

When Rio Arriba County hired a Public Information Officer, Erika Martinez, in 2011 Ms. Madrid started a malicious rumor that Ms. Martinez was sleeping with Commissioner Barney Trujillo. This rumor so infuriated Ms. Martinez that she personally tracked down and found the individual who claims to have heard this information directly from Ms. Madrid. This individual will testify about this conversation with Ms. Madrid.

Ms. Madrid was prone to emotional meltdowns, and when Ms. Erika Martinez received a pay increase in 2013, Ms. Madrid became so upset and distraught that several of her co-workers felt that she could do herself harm.

With regard to pay increases, Ms. Madrid did not politely ask for her own increases, she would raise her voice and demand them from the County Manager. When Mr. Campos declined, she would get emotional and yell at him. Mr. Campos would remind Ms. Madrid that she needed to increase her communication with her staff, hold regular office hours, improve her performance in specific areas, work on increasing her educational qualifications and move the performance of her Department forward to justify a raise. Ms. Madrid did not take this feedback to heart.

Upon learning of her transfer to the RA Detention Center, Ms. Madrid began a campaign of calling numerous elected officials and individuals with influence in her community to request that they use their own influence to her benefit and to contact the County Commission and the County Manager on her behalf. The individuals that she called will testify that Ms. Madrid asked them to use their influence on her behalf.

Shortly before her transfer, Ms. Madrid began claiming intermittent FMLA leave to care for her ailing father. While there is no doubt that at the time her father was very ill, her father has since recovered significantly. Yet Ms. Madrid continues to claim intermittent FMLA leave, despite the fact that her brother, Genaro Madrid, has stated that Ms. Madrid does not take care of her father, their father lives with Genaro Madrid and his wife, and Genaro's wife quit her job in order to take care of their father full-time.

You have stated that Ms. Madrid's WPA claim was based on and prompted by her having brought to the County Manager's attention, the following points: that the Summer Youth Program was sufficiently funded and there was no reason for the delay to start the program; that the County's Summer Programs were not being operated in accord with the standards in place; that individuals selected by a County Commissioner were not qualified for the positions because their background checks disclosed convictions and that they did not have the required driver's licenses.

With regards to the funding of the programs, Ms. Madrid's claims that the program was sufficiently funded so as to not delay the start of the program were false, and it is clear that she would never have had access to such budgetary information either way. In fact, the program was definitively underfunded and additional funds had to be allocated by the County's Finance Department, as will be attested to by Finance staff. Finance staff will also testify that Ms. Madrid had no responsibility for or access to budgetary information for the Summer Programs in the first place. This calls into question her good faith in bringing this to the County Manager's attention when she could not possibly have known the actual status of funding for the program.

Her allegation that Commissioner Trujillo stated that the funding was not available so the Summer Programs should be delayed is untrue. In fact, it was Manager Campos who brought about the delay based upon three factors: (1) there was insufficient budget to cover the entire

program; (2) the program was about to straddle the fiscal years and he wanted to ensure that this did not create further budgetary issues; and (3) the amount of employees to be placed was more than anticipated and the jobs that they would perform were not clear. This last concern was directly related to Ms. Madrid's lack of performance. For the past several years Manager Campos had instructed Ms. Madrid to create a system of orderly and timely hiring into well developed jobs for the Summer Programs in order to ensure that everyone was placed in their jobs -- and not at the last minute. This she had neglected to do.

With regard to the specific allegations you bring regarding Ms. Madrid's replacement, please be advised that Ms. Almager, who held a professional position at LANL, has a Bachelor's Degree, which accounts for the difference in their pay. It should be noted that Mr. Campos encouraged Ms. Madrid many times to pursue her Bachelor's Degree in order to increase the likelihood that she would receive a pay raise, yet Ms. Madrid made no attempts to follow this path. Ms. Almager also went through the application and interview process and scored sufficiently high with the judging panel to place her among the top candidates. To date, the morale in the Human Resources Department has improved and the staff, including an employee who competed against Ms. Almager for the position, has expressed satisfaction with the work environment after Ms. Madrid's transfer.

With regards to Joey Martinez, the allegation that Mr. Martinez had a felony conviction prior to being employed is not true. While Mr. Martinez may have had criminal charges in his background, those charges had been dismissed and disposed of at the time of his hire, and by themselves, criminal charges do not automatically disqualify someone from employment unless the Position Description states as much and as the Human Resources Director, Ms. Madrid knew that. Mr. Martinez' Position Description did not require that he have no criminal charges in his background. And finally, Mr. Martinez was hired on June 2<sup>nd</sup>, yet Ms. Madrid did not receive Mr. Martinez' official background check until June 17<sup>th</sup>, due to her own delay in setting up the program.

With regards to any Summer Program employee who did not have a Driver's License and who was hired, Mr. Campos does not recall Ms. Madrid ever bringing that to his attention, nor does there appear to be any documentation in support of this allegation.

County Manager Campos also does not recall Ms. Madrid ever talking about the Commissioners and that they didn't have hiring or firing authority, although it has been common knowledge that the Commissioners choose the Summer Program employees. In fact, when a former Commissioner chose Ms. Madrid's two daughters as Summer Program employees for at least four consecutive summers, Ms. Madrid did not seem to mind or feel that this was improper. Yet when routine administrative matters in the past Summer Program didn't go her way, she claims whistleblower status?

It is true that Commissioner Trujillo was initially upset that the daughters of his political rivals were hired, yet he never sought their dismissals nor did he ever use foul language regarding them or Ms. Madrid. In a room of four people, Ms. Madrid is the only one who heard profanity or that Commissioner Trujillo demanded the two girls or Ms. Madrid be fired. The others dispute Ms. Madrid's questionable version. Even after the delay in the program, both of the daughters of his political rivals were offered positions, although only one accepted when the other girl received a better paying position.

The allegation that Manager Campos instructed Ms. Madrid to apply for the open Human Resources Director position at the Rural Transit District ("RTD") is also false. While Mr.

Campos did bring this available position to her attention because of her discontent with a transfer to another department, he did not instruct her to apply for it. Ms. Madrid did apply for that HRD position but she did it on her own. She did not receive it because she did not have a Bachelor's Degree. She recently complained to her current supervisor at the Detention Center that she didn't get the RTD job despite the fact that it had been promised to her. If she is referring to County Manager Campos, that is false. Mr. Campos categorically denies that he "promised" her the RTD position, which would have been a promise he could not have delivered on, since the RTD is a totally different governmental entity.

While the County does not dispute that Ms. Madrid's version of events is inflammatory and designed to garner media attention, the County maintains that her credibility is suspect and that multiple witnesses, including her own staff, will testify to her lack of performance and instances of bad faith.

The purpose of this narrative response is not to impugn or assassinate Ms. Madrid's character, although her complaint certainly did attempt to do that to Commissioner Trujillo. It is simply to point out that all is not as it is portrayed by Ms. Madrid and the County is compelled to refute her allegations. Certainly both parties are better off resolving this matter now rather than entering into costly litigation. The County is amenable to discussing this matter further and will ensure that no changes will be made to Ms. Madrid's salary while these discussions are pending.

With regards to Ms. Madrid's salary, the County is in a dilemma in that Ms. Madrid is an Administrative Assistant IV, a classified position, who is being paid higher than her immediate supervisor, the second in command in the Detention Center, the Assistant Detention Administrator. Long-term, this situation is not workable in the County classification and salary schedule context. The County counter-offers that Ms. Madrid should be allowed to take the full year of intermittent FMLA leave that she is entitled to at her present salary, but that her salary be adjusted when her FMLA leave expires. The County will agree that she will receive all future step and cost of living increases that all other County classified employees receive. The County maintains that both parties should bear their own costs, including attorneys' fees.

With regards to a non-disparagement clause and confidentiality, the County is unaware of legal authority that ensures that the negotiations contained in these correspondences is indeed confidential under New Mexico law. We would like an example of Ms. Madrid's proposed non-disparagement clause and any authority on point regarding confidentiality in this type of matter in view of public records under IPRA.

Again, I appreciate your patience in awaiting the County's response but it is an intricate history, to say the least. I look forward to hearing from you.

Sincerely,

Ted J. Trujillo  
Rio Arriba County attorney

cc: Tomas Campos, RA County Manager

November 10, 2014

Via E-Mail (tedjtrujillo@gmail.com)

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**Re: Jessica Madrid**  
**Confidential Offer of Settlement in Accord with NMRA Rule 11-408**

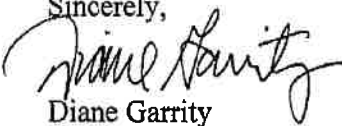
Dear Mr. Trujillo:

In response to your letter, we hold firm with no reduction to Ms. Madrid's salary and payment of attorney fees. The list of alleged performance deficiencies was never brought to Ms. Madrid's attention during her tenure as the HR Director. In fact, we have a recording of Mr. Campos declaring the transfer was not related to Ms. Madrid's job performance, but was "political". Accordingly, the so-called performance issues are nothing more than employees complaining about their supervisor, after the fact and after observing the wrath Ms. Madrid suffered after she challenged the actions of Commissioner Trujillo.

The undocumented work performance issues are pretext for retaliation. Further, Ms. Madrid is now the subject of gossip about her work. This started after I sent the October 3<sup>rd</sup> letter to you. It appears that despite your statement that the County would like to avoid litigation, that we must bring suit in order for Ms. Madrid to obtain any relief. If this is not the case, then I suggest we enter into a meaningful process to resolve this claim. Merely exchanging letters is not resolving this matter.

Thank you.

Sincerely,



Diane Garrity

cc. Jessica Madrid



# **LAW OFFICES OF TED J. TRUJILLO**

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November 10, 2014

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Sent via email to: ([dgarrity@sgmnmlaw.com](mailto:dgarrity@sgmnmlaw.com))

Re: *Claim of Jessica Madrid*

Dear Ms. Garrity:

I've reviewed your letter with County Manager Campos and he asked me to relate to you that he had numerous and regular conversations with Jessica Madrid, intended to lead her to a greater professional growth, as was his practice with all the Directors under his direct supervision. He states that Jessica was well-aware of his expectations for her professional development.

Notwithstanding Mr. Campos' reservations, he has authorized me to meet directly with you in order to hopefully develop a suitable process to explore, and hopefully reach a settlement in this matter. I am willing to meet with you in your Santa Fe office. Do you have any times this week that would work for you? Email me or give me a call. Thank you.

Sincerely,

*Original Signed*

Ted J. Trujillo  
Rio Arriba County attorney

cc: Tomas Campos, RA County Manager

## **SETTLEMENT AGREEMENT**


This Settlement Agreement is entered between Jessica Madrid ("Madrid") and the County of Rio Arriba New Mexico ("County"), and collectively "the parties", to resolve an employment situation amicably without litigation as follows:

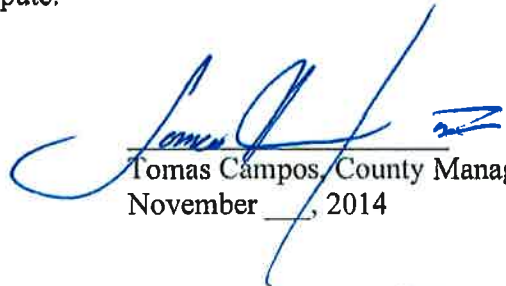
1. Madrid agrees to accept the position of Administrative Assistant IV for the County's Detention Center. Madrid's position is in the classified service and she has all due process and other constitutional protections as provided in the County's personnel policies regarding discipline and other benefits of employment.
2. The County agrees to allow Madrid to remain at the same rate of pay as she had when she was in the position of HR Director for the County.
3. The County agrees to pay Madrid's attorney fees in the amount of \$3,500.00, made directly to Attorney Garrity through a Professional Services Contract issued by County.
4. By entering into this Settlement Agreement the parties do not admit liability, but desire to reach a resolution in order to save the expense of anticipated litigation.
5. This Settlement Agreement will be executed in two original documents, one original for each party. The original received by Madrid will be considered a personal document and will not be maintained as a regular record of the County. Thereafter, the parties agree to maintain confidentiality of this Settlement Agreement and to cooperate if any person or organization requests information. Madrid agrees to immediately contact the County Manager if she is asked for a copy of this Settlement Agreement or is asked to disclose the terms of this Settlement Agreement to any member of the public and/or media. Madrid will not release this information directly, indirectly or by deferring any request to the County for a response

6. By entering into this Settlement Agreement Madrid agrees that she has effected a full release of all claims she could have brought against the County as a result of her transfer to the County's Detention Center.


7. The parties have had a full opportunity to review this Settlement Agreement and have used their respective counsel in this process. This Settlement Agreement is voluntary and is executed knowingly and in good faith.


8. In the event a party to this Settlement Agreement does not comply, this Settlement Agreement is enforceable in a court of competent jurisdiction. The parties to this Settlement Agreement state affirmatively they have the power to bind their respective organization. The laws of the State of New Mexico shall apply to any dispute.

  
\_\_\_\_\_  
Jessica Madrid  
November 18, 2014

  
\_\_\_\_\_  
Tomas Campos, County Manager  
November \_\_, 2014

Acknowledged as to form:

  
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